



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 10, 2023

IN THE MATTER OF:

Appeal Board No. 625989

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 625989 and 625990, the claimant appeals from the decisions of the Administrative Law Judge filed September 27, 2022, which sustained the revised determination holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits with a weekly benefit rate of \$182; and sustained the initial determination charging the claimant with an overpayment of \$23,840 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a).

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant is an actor and had been the owner of a theater and exhibition company since 2011. This self-employment was the claimant's only source of income. On June 22, 2020, the claimant filed a claim for regular unemployment benefits, which was made effective March 9, 2020. On that same date, the claimant applied for Pandemic Unemployment Assistance (PUA) benefits. On his PUA application, the

claimant indicated that he was self-employed, and that his annual net income for the most recently filed tax year was \$50,000. The claimant did not submit any supporting documents; at the time he applied for PUA benefits he had not yet filed his 2019 tax return.

Based upon the information the claimant provided on his PUA application, the claimant was found eligible to receive PUA benefits effective February 24, 2020, and a weekly benefits rate of \$480 was established based on his reported net earnings of \$50,000. An initial determination was mailed to the claimant on July 20, 2020. This determination also provided, "If you are self-employed, you must provide documentation of your earnings if you have not already done so. Acceptable documentation includes, but is not limited to, a copy of your most recent filed income tax return, paycheck stubs, bank receipts, business records, and ledgers. Failure to provide this information may cause your PUA benefit rate to decrease, and an overpayment to be established for any benefits overpaid to you." (Emphasis in original.)

On July 29, 2020, the claimant submitted a request for reconsideration of his weekly benefit rate, indicating that his net earnings for 2019 were \$66,145.35. Along with his request, the claimant submitted credit union and other account statements, and sales reports for his theater and exhibition company. No other business records or ledgers were submitted, and the claimant's 2019 tax return had not been filed.

On November 4, 2021 and November 8, 2021, the Department of Labor issued the determinations now before the Board, reducing the claimant's weekly benefit rate, and charging him with a recoverable overpayment of PUA benefits. The claimant filed his 2019 tax return on November 29, 2021. The Schedule C filed with his 2019 tax return reflects gross receipts or sales in connection with the claimant's self-employment in the amount of \$62,667, and line 31 of the Schedule C reflects a net loss of \$23,984.

Between the week ending March 1, 2020 and the week ending September 5, 2021, the claimant received the weekly benefit rate of \$480.

OPINION: Pursuant to §2102(d) of the Coronavirus Aid, Relief and Economic

Security (CARES) Act, the weekly benefit rate for claimants receiving Pandemic Unemployment Assistance (PUA) benefits is determined in accordance with the New York Labor Law §590 (5) and §625.6 of Title 20 of the Code of Federal

Regulations (CFR) and the minimum weekly benefit rate cannot be less than the minimum amount established by the US Department of Labor pursuant to §

625.6(b) of Title 20 of the Code of Federal Regulations. Pursuant to §625.6(a)(2) of Title 20 of the Code of Federal Regulations (CFR), the

self-employment wages to be used to establish a claim for Pandemic Unemployment Assistance shall be the net income reported on the claimant's tax return. In addition, Unemployment Insurance Program Letter No. 16-20 provides, in relevant part, "For purposes of computing the [PUA weekly benefit amount], the state should use net income reported on the tax return for a self-employed individual." (See Attachment I to UIPL No. 16-20, Change I, § 22) Pursuant to

§625.6 (a)(2) of Title 20 of the Code of Federal Regulations (CFR), the most

recent calendar year shall serve as the base period for Pandemic Unemployment Assistance claims.

The credible evidence establishes that the claimant was self-employed, and that he filed a claim for Pandemic Unemployment Assistance on June 22, 2020. Therefore, according to the Code of Federal Regulations and the relevant provisions of UIPL 16-20, Change 1, the base period to be used to calculate the claimant's weekly benefit rate is the calendar year 2019. The evidence establishes that the claimant's net income from self-employment, as reflected on Schedule C of 2019 income tax return, was -\$23,984. Accordingly, the claimant is entitled to the minimum weekly benefit rate of \$182.

Pursuant to UIPL 16-20, change 1, Attachment 1, when an individual does not provide proof of calendar year 2019 wages or self-employment net income within 21 days, an individual's weekly benefit rate will be reduced based on either the record of wages already on file or the minimum PUA weekly benefit rate (here, \$182), and an overpayment must be established for any benefits overpaid. The evidence establishes that the claimant's weekly benefit rate was initially set at \$480, based upon the claimant's statement when applying for PUA benefits that his annual net income for the year prior to filing his claim was \$50,000, and that the claimant

was paid \$480 each week from the week ending March 1, 2020 through September 9, 2021, a total of 80 weeks. Since the claimant was only entitled to receive \$182 each week, the difference of \$298 paid weekly over this period, totaling \$23,840, was overpaid and is repayable as a matter of law.

However, the evidence fails to establish that the claimant did not accept the

benefits he received in good faith. The sole basis for the claimant's lack of good faith that was asserted by the Department of Labor, was that the claimant did not submit the Schedule C from his 2019 taxes. We note that the claimant did not file his 2019 tax return until November 29, 2021, after his benefit rate had been recalculated and reduced. Since his tax return was not filed until November 29, 2021, the claimant could not have provided it to the Department of Labor prior to that date.

DECISION: In Appeal Board Nos. 625989 and 625990, the decisions of the Administrative Law Judge are affirmed.

In Appeal Board No. 625989, the revised determination holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits with a weekly benefit rate of \$182, is sustained.

In Appeal Board No. 625990, the initial determination charging the claimant with an overpayment of \$23,840 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and repayment would be contrary to equity and good conscience. For more information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.